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HOUSE BILL 151

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Debbie A. Rodella

AN ACT

RELATING TO BOARDS AND LICENSING; PROVIDING FOR IMPROVED
REGULATION OF THE PRACTICE OF OPTOMETRY; AMENDING, REPEALING
AND ENACTING SECTIONS OF THE OPTOMETRY ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-2-2 NMSA 1978 (being Laws 1973,
Chapter 353, Section 2, as amended) is amended to read:

"61-2-2. DEFINITIONS.--As used in the Optometry Act:

A. "practice of optometry" means:

(1) the employment of any subjective or
objective means or methods, including the prescription or
administration of topical ocular pharmaceutical agents, for
the purpose of determining the visual defects or abnormal
conditions of the human eye and its adnexa; [and]

(2) the employing, adapting or prescribing of

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1 preventive or corrective measures, including lenses, prisms,
2 scleral or corneal contact [~~or corneal~~] lenses or other
3 optical appliances, vision therapy and low vision
4 rehabilitation; and prescribing or administering topical
5 ocular pharmaceutical agents as authorized in the Optometry
6 Act and oral pharmaceutical agents as authorized in [~~Section~~
7 ~~61-2-10.2 NMSA 1978~~] that act for the correction, relief or
8 referral of visual defects or abnormal conditions of the human
9 eye and its adnexa. The "practice of optometry" shall not
10 include the use of surgery or injections in the treatment of
11 eye diseases; [~~provided, persons who sell or dispense~~
12 ~~eyeglasses upon prescription and who do not prescribe~~
13 ~~ophthalmic lenses for the eyes shall not employ, adapt,~~
14 ~~dispense, modify, provide, sell, give or fit contact or~~
15 ~~corneal lenses; and provided further, the testing, design,~~
16 ~~dispensing and monitoring of a contact lens fitting shall be~~
17 ~~performed at the optometrist's place of practice]; and~~

18 (3) the employing, adapting, dispensing,
19 modifying, providing, selling, giving, fitting, duplicating or
20 prescribing any kind of scleral or corneal contact lens;

21 B. "ophthalmic lens" means a lens that has a
22 spherical, cylindrical or prismatic value and that is ground
23 pursuant to a prescription and intended to be used as
24 eyeglasses or spectacles;

25 [~~C. "contact or corneal lens" means any lens to be~~

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1 ~~worn on the anterior segment of the human eye, to be~~
2 ~~prescribed, dispensed, adapted, employed, modified, provided,~~
3 ~~sold and fitted by a licensed optometrist or physician;~~

4 ~~D. "prescription" means a formula written for~~
5 ~~ophthalmic lenses, for a topical ocular pharmaceutical agent~~
6 ~~or for an oral pharmaceutical agent as authorized in Section~~
7 ~~61-2-10.2 NMSA 1978 that comes under the provisions of the New~~
8 ~~Mexico Drug, Device and Cosmetic Act by a person duly licensed~~
9 ~~and containing the following essential elements:-~~

10 ~~(1) an order given individually for the~~
11 ~~person for whom prescribed, either directly from the~~
12 ~~prescriber to the pharmacist or indirectly by means of a~~
13 ~~written order signed by the prescriber, and shall bear the~~
14 ~~name and address of the prescriber, his license~~
15 ~~classification, the name and address of the patient, the name~~
16 ~~and quantity of the drug prescribed, directions for use and~~
17 ~~the date of issue; or~~

18 ~~(2) dioptric power of spheres, cylinders and~~
19 ~~prisms, axes of cylinders, position of prism base and, if so~~
20 ~~desired by the prescriber, light transmission properties and~~
21 ~~lens curve values;~~

22 ~~(3) designation of pupillary distance; and~~

23 ~~(4) name of patient, date of prescription,~~
24 ~~expiration date and the name and office location of~~
25 ~~prescriber; provided, however, that:-~~

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1 Mexico Drug, Device and Cosmetic Act and that contains
2 essential elements as set forth by the board;

3 E. "eyeglasses" means any exterior optical device
4 using ophthalmic lenses for the correction or relief of
5 disturbances in and anomalies of human vision and includes
6 spectacles and other devices using ophthalmic lenses; and

7 F. "board" means the board of optometry."

8 Section 2. Section 61-2-4 NMSA 1978 (being Laws 1973,
9 Chapter 353, Section 3) is amended to read:

10 "61-2-4. LICENSE REQUIRED. -- Unless licensed or exempted
11 under the Optometry Act, no person shall:

12 A. practice optometry;

13 B. represent himself or offer his services as
14 ~~[being able]~~ licensed to practice optometry or use the title
15 of optometrist, its abbreviation signs or symbols of
16 optometry;

17 C. prescribe eyeglasses or give [a] an eyeglass
18 prescription to a patient; [or]

19 D. duplicate or replace an ophthalmic lens [not
20 ~~including contact lenses, without a current prescription or~~
21 ~~without a written authorization from the patient if the~~
22 ~~prescription is not available]; or~~

23 E. use, adapt, dispense, modify, provide, sell,
24 give, fit or duplicate scleral or corneal contact lenses,
25 including plano or colored lenses. "

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1 Section 3. Section 61-2-5 NMSA 1978 (being Laws 1973,
2 Chapter 353, Section 4, as amended) is amended to read:

3 "61-2-5. BOARD CREATED--TERMS--APPOINTMENT--
4 CONTINUANCE--REMOVAL.--

5 A. There is created a six-member "board of
6 optometry" composed of [~~four persons who~~] New Mexico
7 residents, four of whom have resided in and have been
8 continuously engaged in the practice of optometry in New
9 Mexico for at least five years immediately prior to their
10 appointment and two persons who shall represent the public.
11 The public members of the board shall not have been licensed
12 as an optometrist, nor shall the public members have any
13 significant financial interest, whether direct or indirect, in
14 the occupation regulated.

15 B. Professional members of the board shall be
16 appointed by the governor from a list of five names for each
17 vacancy submitted to him by the state organization affiliated
18 with the American optometric association. Not more than one
19 professional board member shall maintain his place of business
20 or reside in any one county, and professional appointments
21 shall be made on a geographical basis to effect representation
22 of all areas of the state. Board members shall be appointed
23 for staggered terms of five years or less, each. The [~~terms~~]
24 term of each board member shall be made in such a manner that
25 the term of one board member ends on June 30 of each year.

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1 Board members shall serve until their successors have been
2 appointed and qualified. A professional member vacancy shall
3 be filled for the unexpired term by the appointment by the
4 governor of a licensed optometrist from the general area of
5 the state represented by the former member. All members of
6 the board of optometry in office on the effective date of the
7 Optometry Act shall serve out their unexpired terms.

8 C. The governor may remove any member from the
9 board for the neglect of any duty required by law, for
10 incompetence, for improper or unprofessional conduct as
11 defined by board regulation or for any reason that would
12 justify the suspension or revocation of his license to
13 practice optometry.

14 D. No board member shall serve more than two
15 consecutive terms, and any member failing to attend, after
16 proper notice, three consecutive meetings shall automatically
17 be removed as a board member unless excused for reasons set
18 forth in board regulations.

19 E. In the event of a vacancy for any reason, the
20 board secretary shall immediately notify the governor, the
21 board members and the state optometric association of the
22 vacancy, the reason for its occurrence and the action taken by
23 the board, so as to expedite the appointment of a new board
24 member. "

25 Section 4. Section 61-2-6 NMSA 1978 (being Laws 1973,
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1 Chapter 353, Section 5, as amended) is amended to read:

2 "61-2-6. ORGANIZATION--MEETINGS--COMPENSATION--POWERS
3 AND DUTIES.--

4 A. The board shall annually elect a chairman, a
5 vice chairman and a secretary-treasurer, [~~each of whom~~] who
6 shall serve until his successor is elected and qualified.

7 B. The board shall meet at least annually for the
8 purpose of examining candidates for licensure. Special
9 meetings may be called by the chairman and shall be called
10 upon the written request of a majority of the board members.
11 A majority of the board members currently serving constitutes
12 a quorum.

13 C. Members of the board may be reimbursed as
14 provided in the Per Diem and Mileage Act but shall receive no
15 other compensation, perquisite or allowance.

16 D. The board shall:

17 (1) administer and enforce the provisions of
18 the Optometry Act;

19 (2) adopt, publish and file, in accordance
20 with the Uniform Licensing Act and the State Rules Act, all
21 rules and regulations for the implementation and enforcement
22 of the provisions of the Optometry Act;

23 (3) adopt and use a seal;

24 (4) administer oaths and take testimony on
25 any matters within the board's jurisdiction;

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(5) keep an accurate record of all its meetings, receipts and disbursements;

(6) establish fees, examine candidates and keep a record of all examinations held, together with the names and addresses of all persons taking the examinations and the examination results. Within thirty days after any examination, the board shall give written notice to each applicant examined of the results of the examination as to the respective applicant;

(7) certify as passing each applicant who obtains a grade of at least seventy-five percent on each subject upon which he is examined; providing that any applicant failing may apply for re-examination at the next scheduled examination date;

(8) keep a book of registration in which the name, address and license number of all licensees shall be recorded, together with a record of all license renewals, suspensions and revocations;

(9) grant, deny, renew, suspend or revoke licenses to practice optometry in accordance with the provisions of the Uniform Licensing Act for any cause stated in the Optometry Act;

(10) develop and administer qualifications for certification for the use of topical ocular pharmaceutical agents and oral pharmaceutical agents as authorized in Section

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1 61-2-10.2 NMSA 1978, including minimum educational
2 requirements and examination, as required by Section 61-2-10
3 NMSA 1978 and provide the board of pharmacy with an annual
4 list of optometrists certified to use topical ocular
5 pharmaceutical agents and oral pharmaceutical agents as
6 authorized in Section 61-2-10.2 NMSA 1978;

7 (11) provide for the suspension of an
8 optometrist's license for sixty days upon a determination of
9 use of pharmaceutical agents without prior certification in
10 accordance with Section 61-2-10 NMSA 1978, after proper notice
11 and an opportunity to be heard before the board; [and]

12 (12) have the power to employ agents or
13 attorneys; and

14 (13) issue investigative subpoenas to
15 investigate complaints against licensees pursuant to board
16 rules prior to the issuance of a notice of contemplated action
17 pursuant to the Uniform Licensing Act. "

18 Section 5. Section 61-2-7 NMSA 1978 (being Laws 1973,
19 Chapter 353, Section 6) is amended to read:

20 "61-2-7. DISPOSITION OF FUNDS-- OPTOMETRY FUND CREATED--
21 METHOD OF PAYMENTS-- BONDS. --

22 A. There is created the "optometry fund".

23 B. All funds received by the board and money
24 collected under the Optometry Act shall be deposited with the
25 state treasurer, who shall place the [same] funds and money to

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1 the credit of the optometry fund.

2 C. All payments out of the optometry fund shall be
3 made on vouchers issued and signed by the secretary-treasurer
4 of the board, or the board's designee, upon warrants drawn by
5 the department of finance and administration in accordance
6 with the budget approved by that department.

7 D. All amounts in the optometry fund shall be
8 subject to the order of the board and shall be used only for
9 the purpose of meeting necessary expenses incurred in:

10 (1) the performance of the provisions of the
11 Optometry Act and the duties and powers imposed ~~[thereby]~~ by
12 that act; and

13 (2) the promotion of optometric education and
14 standards in this state within the budgetary limits.

15 E. All funds which may have accumulated to the
16 credit of the board under any previous law shall be
17 transferred to the optometry fund and shall continue to be
18 available for use by the ~~[optometry]~~ board in accordance with
19 the provisions of the Optometry Act. All money unused at the
20 end of the fiscal year shall not revert but shall remain in
21 the optometry fund for use in accordance with the provisions
22 of the Optometry Act.

23 ~~[F. The secretary-treasurer and any employee who~~
24 ~~handles money or who certifies the receipt or disbursement of~~
25 ~~money received by the board shall, within thirty days after~~

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1 ~~election or employment by the board, execute a bond in~~
2 ~~accordance with the provisions of the Surety Bond Act,~~
3 ~~conditioned on the faithful performance of the duties of the~~
4 ~~office or position and on an accounting of all funds coming~~
5 ~~into his hands.~~

6 G. ~~The secretary-treasurer shall make, at the end~~
7 ~~of each fiscal year, an itemized report to the governor of all~~
8 ~~receipts and disbursements of the board for the prior fiscal~~
9 ~~year, together with a report of the records and information~~
10 ~~required by the Optometry Act. A copy of the annual report to~~
11 ~~the governor shall be presented to the board at its first~~
12 ~~meeting in July of each year.]"~~

13 Section 6. Section 61-2-8 NMSA 1978 (being Laws 1973,
14 Chapter 353, Section 7) is amended to read:

15 "61-2-8. QUALIFICATIONS FOR LICENSURE AS AN
16 OPTOMETRIST.--Each applicant for licensure as an optometrist
17 shall furnish evidence satisfactory to the board that the
18 applicant:

- 19 A. has reached the age of majority;
- 20 B. is of good moral character and of temperate
21 habits;
- 22 C. has completed [at least an approved four-year
23 high school course of study or the equivalent thereof as
24 determined by regulations of the board is a citizen of the
25 United States or has taken out his first naturalization

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1 ~~papers; and]~~ a pre-optometry curriculum as required by schools
2 or colleges of optometry approved by the board;

3 D. has completed the required education for
4 therapeutics pursuant to the Optometry Act;

5 E. has graduated and been awarded a doctor of
6 optometry degree from a school or college of optometry
7 approved and accredited by the board [~~and~~]. In the event the
8 applicant applies for licensure by endorsement, he shall have
9 been awarded a doctor of optometry degree from a school or
10 college of optometry, approved and accredited by the board,
11 which had a minimum course of study of four thousand clock
12 hours of instruction leading to [~~such~~] that degree; and

13 F. has successfully completed the examinations
14 required by the board. "

15 Section 7. Section 61-2-9 NMSA 1978 (being Laws 1973,
16 Chapter 353, Section 8) is amended to read:

17 "61-2-9. LICENSURE BY EXAMINATION--LICENSURE BY
18 ENDORSEMENT.--

19 A. The board shall adopt rules for application and
20 licensure by examination and by endorsement. An applicant
21 meeting the qualifications set forth in Section [~~67-1-7 NMSA~~
22 ~~1953~~] 61-2-8 NMSA 1978 shall:

23 (1) for licensure by examination file his
24 application under oath on forms supplied by the board for an
25 examination by the board. The examination shall be confined

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1 to the subjects within the curriculum of colleges of optometry
2 approved and accredited by the board and shall include written
3 tests and practical demonstrations and may include oral tests;
4 or

5 (2) for licensure by endorsement file his
6 application under oath on forms supplied by the board which
7 conform to board regulations on endorsement and furnish proof
8 satisfactory to the board of his having been licensed by
9 examination in another state which had qualifications equal to
10 or exceeding those required in this state on the date of his
11 original licensure [~~and satisfying the board that he holds a~~
12 ~~doctor of optometry degree, from a school or college approved~~
13 ~~and accredited by the board, which was obtained after the~~
14 ~~completion of a course of study with a minimum of four~~
15 ~~thousand clock hours of instruction~~]. The applicant [~~must~~]
16 shall have been actively engaged in the practice of optometry
17 in the state of licensure or in federal service for seven
18 consecutive years immediately prior to the year in which
19 application is made [~~This proof~~] and met continuing education
20 requirements equal to or exceeding New Mexico's during that
21 period. Proof of having met the requirements shall be
22 accepted in lieu of the written portion of the examination.
23 Applicants for licensure without written examination shall be
24 examined to the satisfaction of the board by practical, oral
25 and clinical demonstration in the presence of a majority of

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1 the board, and a detailed record, including the score of
2 [~~such~~] the examination shall be kept and made available to the
3 applicant at his request.

4 B. All applicants successfully passing the
5 examinations shall be issued a license and certificate by the
6 board upon payment of the license [~~fee~~] and certification
7 fees. "

8 Section 8. Section 61-2-10 NMSA 1978 (being Laws 1977,
9 Chapter 30, Section 3, as amended) is amended to read:

10 "61-2-10. CERTIFICATION FOR USE OF TOPICAL OCULAR
11 PHARMACEUTICAL AGENTS-- DISPLAY. --

12 A. The board shall issue certification for the use
13 of topical ocular pharmaceutical agents to optometrists
14 licensed [~~on the effective date of this section~~] prior to June
15 17, 1977 who have completed appropriate forms issued by the
16 board and submitted proof of successful completion of the
17 educational requirements for certification established by the
18 board, which requirements shall be not less than those
19 required in Paragraph (2) of Subsection B of this section.

20 B. The board shall issue certification for the use
21 of topical ocular pharmaceutical agents to optometrists
22 licensed after [~~the effective date of this section~~] June 17,
23 1977 who have completed appropriate forms issued by the board
24 and submitted proof of:

25 (1) having satisfactorily completed a course

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1 in pharmacology as applied to optometry with particular
2 emphasis on the topical application of diagnostic
3 pharmaceutical agents to the eye for the purpose of
4 examination of the human eye and the analysis of ocular
5 functions, which course is offered by an institution
6 accredited by a regional or professional accreditation
7 organization recognized or approved by the national commission
8 on accrediting or the United States secretary of education; or
9 (2) having postgraduate education with a
10 minimum of seventy hours of instruction in general and ocular
11 pharmacology as applied to optometry taught by an accredited
12 institution and approved by the board.

13 C. The board shall issue certification for the use
14 of topical ocular pharmaceutical agents to optometrists who
15 have successfully completed an examination and submitted proof
16 of having satisfactorily completed a course in pharmacology as
17 applied to optometry, with particular emphasis on the
18 application of pharmaceutical agents for the purpose of
19 examination of the human eye, analysis of ocular functions and
20 treatment of visual defects or abnormal conditions of the
21 human eye and its adnexa. The course shall constitute a
22 minimum of one hundred classroom-clinical hours of instruction
23 in general and ocular pharmacology, including therapeutic
24 pharmacology as applied to optometry, and shall be taught by
25 an accredited institution and approved by the board.

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1 D. The certification authorized by this section
2 shall be displayed in a conspicuous place in the optometrist's
3 principal office or place of business. "

4 Section 9. Section 61-2-12 NMSA 1978 (being Laws 1973,
5 Chapter 353, Section 10, as amended) is amended to read:

6 "61-2-12. LICENSE-- DISPLAY-- RENEWAL-- RETIREMENT--
7 RESUMPTION OF PRACTICE. --

8 A. Every person to whom a certificate of license
9 as an optometrist has been issued shall display the
10 certificate of license in a conspicuous place in his principal
11 office or place of business.

12 ~~[B. Each license shall be renewed annually on or~~
13 ~~before July 1 by the licensee remitting to the secretary-~~
14 ~~treasurer of the board the proper fee and proofs of~~
15 ~~registration with the revenue processing division of the~~
16 ~~taxation and revenue department and of continued education as~~
17 ~~required by regulation of the board. Notice of renewal shall~~
18 ~~be sent to each licensee by the board before July 1 of each~~
19 ~~year. Failure to renew his license on or before September 1~~
20 ~~shall subject the licensee to a late charge as determined by~~
21 ~~regulation of the board not to exceed the limit set forth in~~
22 ~~the Optometry Act. Any license not renewed by October 1 of~~
23 ~~each year shall be automatically revoked. Upon receipt of the~~
24 ~~renewal certificate, each licensee shall attach a copy of the~~
25 ~~renewal certificate to his certificate of license. Each~~

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1 ~~optometrist applying for the renewal of his license shall~~
2 ~~furnish to the secretary-treasurer of the board satisfactory~~
3 ~~evidence that he has attended, in the preceding year, at least~~
4 ~~two days of the annual education program, to include a minimum~~
5 ~~of six credit hours of continuing education in ocular~~
6 ~~therapeutic pharmacological agents, as conducted by the New~~
7 ~~Mexico optometric association, or its equivalent as determined~~
8 ~~by the board. The secretary-treasurer shall send a written~~
9 ~~notice of the continuing education requirements at least~~
10 ~~thirty days prior to August 1 of each year to the last known~~
11 ~~address of the licensee. Failure of a licensee to meet annual~~
12 ~~postgraduate education requirements shall be grounds for the~~
13 ~~revocation of his license. Any license revoked because of the~~
14 ~~failure to meet the continuing education requirements shall be~~
15 ~~reinstated by the board upon the presentation of evidence of~~
16 ~~postgraduate study of a standard approved by the board and the~~
17 ~~payment of all fees due.]~~

18 B. A license to practice optometry is for one
19 year, renewable by the board on or before July 1 of each year,
20 pursuant to rules of the board.

21 C. Upon expiration of a license, the licensee may
22 continue to practice optometry for no more than thirty days
23 following expiration. The board shall adopt regulations for
24 reactivation of an expired license. Failure to renew or
25 reactivate an expired license during the thirty-day grace

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1 period shall result in expiration of the license and the
2 therapeutic certificate. The board shall adopt rules for
3 reinstatement of a license. A licensee's license shall lapse
4 if not renewed within two years of its expiration. An
5 applicant whose license has lapsed shall meet all licensure
6 requirements in effect at the time of reapplication in order
7 to practice optometry again.

8 D. Any optometrist who intends to retire from the
9 practice of optometry shall notify the board in writing before
10 the expiration of his renewal of licensure, and the secretary-
11 treasurer of the board shall acknowledge the receipt of the
12 notice and record it as part of the proceedings of the next
13 board meeting. If within a period of five years from the year
14 of retirement the optometrist desires to resume practice, he
15 shall so notify the board in writing, and, upon giving proof
16 of completing refresher courses and other requirements
17 prescribed by regulation of the board and the payment of an
18 amount equivalent to all lapsed renewal fees, his certificate
19 of license shall be restored to him in full effect. Any
20 optometrist not currently licensed because of failure to
21 timely renew, because of retirement or for any other reason,
22 who practices optometry in this state shall be subject to the
23 penalties provided for violation of the Optometry Act.

24 E. Before engaging in the practice of optometry
25 and after a license has been issued to him, each [registered]

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1 licensed optometrist shall notify the secretary-treasurer of
2 the board in writing of the address at which he intends to
3 begin practice and subsequently of any changes in his business
4 address or location. Any notices the board is required to
5 give a licensee shall legally have been given when delivered
6 to the latest address furnished by the licensee to the board."

7 Section 10. Section 61-2-13 NMSA 1978 (being Laws 1973,
8 Chapter 353, Section 11) is amended to read:

9 "61-2-13. [~~REFUSAL, SUSPENSION OR REVOCATION OF LICENSE~~]
10 DISCIPLINARY PROCEEDINGS. -- [~~The board may refuse to issue,~~
11 ~~suspend or revoke any license, in accordance with the~~
12 ~~provisions of the Uniform Licensing Act, for any of the~~
13 ~~following reasons] Pursuant to the Uniform Licensing Act and
14 rules of the board, the board may take any disciplinary action
15 against a licensee for:~~

- 16 A. conclusive evidence of conviction of a felony
17 as shown by a certified copy of the record of the court of
18 conviction;
- 19 B. malpractice or incompetence;
- 20 C. continued practice by a person knowingly having
21 an infectious or contagious disease;
- 22 [~~D. advertising by means of knowingly false,~~
23 ~~misleading or deceptive statements or advertising or~~
24 ~~attempting to practice under a name other than one's own]~~
- 25 D. making false, misleading or fraudulent claims,

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1 attempting to attract patients in an unethical manner or
2 failing to use the appropriate professional designation
3 pursuant to the Advertisement of Health Care Services Act or
4 board rule;

5 E. habitual drunkenness or addiction to the use of
6 habit-forming drugs or other condition that renders the
7 licensee or applicant unfit or unable to practice optometry;

8 F. aiding or abetting in the practice of optometry
9 any person not duly licensed to practice optometry in this
10 state;

11 G. lending, leasing or in any other manner placing
12 his certificate of license at the disposal or in the service
13 of any person not licensed to practice optometry in this
14 state;

15 H. employing, procuring or inducing an unlicensed
16 person to practice optometry in this state, unless that person
17 is exempted pursuant to the Optometry Act;

18 I. violating any of the provisions of the
19 Optometry Act or rules adopted by the board; [or]

20 J. committing any act defined as "unprofessional
21 conduct" by regulation of the board filed in accordance with
22 the State Rules Act. Without limiting the right of the board
23 to determine what acts on the part of a licensee constitute
24 unprofessional conduct, the following acts shall be deemed to
25 be unprofessional conduct:

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1 (1) any conduct of a character tending to
2 deceive or defraud the public;

3 (2) the obtaining of a fee by fraud or
4 misrepresentation;

5 (3) charging unusual, unreasonable or
6 ~~[exorbitant]~~ exorbitant fees;

7 (4) [~~"splitting" or~~] dividing a fee with any
8 person;

9 (5) advertising professional superiority;

10 [~~(6) advertising by any means or granting a~~
11 ~~discount for professional services, prosthetic devices,~~
12 ~~eyeglasses, lenses, frames or mountings, whether sold~~
13 ~~separately or as part of the professional services; or~~

14 [~~(7) using any type of price advertising~~
15 ~~which would tend to imply the furnishing of professional~~
16 ~~services without cost or at a reduced cost to the public]~~

17 (6) marketing in a manner that implies free
18 services;

19 (7) breach of patient confidentiality; or

20 (8) sexual misconduct with a patient;

21 K. using fraud or deceit in procuring or
22 attempting to procure a license or in the course of applying
23 for a license renewal;

24 L. refusal to provide a copy of an eyeglass
25 prescription less than one year old to a patient;

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1 M duplicating or replacing an ophthalmic lens
2 with a prescription more than two years old;

3 N. testing, designing or providing care of scleral
4 or corneal contact lenses, including plano or colored lenses,
5 at a location unapproved by the board;

6 O. violating the New Mexico Controlled Substances
7 Act;

8 P. revocation, suspension or denial of a license
9 or certification to practice optometry by any jurisdiction for
10 actions by the licensee that would be subject to disciplinary
11 action by the board, a certified copy of the record of the
12 action taken by another jurisdiction being conclusive
13 evidence;

14 Q. practicing or attempting to practice optometry
15 without a current license issued by the board;

16 R. willfully making a false oath or affirmation;

17 S. failure to furnish the board with information
18 requested by the board pursuant to an investigation; or

19 T. selling prescription eyeglasses or scleral or
20 corneal contact lenses, including plano or colored lenses,
21 frames or mountings for lenses in an establishment that
22 derives most of its income from other business. "

23 Section 11. Section 61-2-14 NMSA 1978 (being Laws 1973,
24 Chapter 353, Section 12, as amended) is amended to read:

25 "61-2-14. OFFENSES. --

. 125910. 2

underscored material = new
[bracketed material] = delete

1 A. Each of the following acts committed by any
2 person constitutes a fourth degree felony, punishable upon
3 conviction as provided in the Criminal Code:

4 (1) practicing or attempting to practice
5 optometry without a current license issued by the board;

6 (2) using or attempting to use pharmaceutical
7 agents without the certification issued by the board, unless
8 [however] the administration of pharmaceutical agents is done
9 under the direct supervision of a licensed optometrist
10 certified to administer the pharmaceutical agents in
11 accordance with the provisions of the Optometry Act;

12 (3) permitting any person in one's employ,
13 supervision or control to practice optometry or use
14 pharmaceutical agents unless that person is licensed and
15 certified in accordance with the provisions of the Optometry
16 Act or unless the administration of pharmaceutical agents is
17 done under the direct supervision of a licensed optometrist
18 certified to administer the pharmaceutical agents in
19 accordance with the provisions of the Optometry Act; and

20 (4) practicing optometry, including the use
21 of pharmaceutical agents, during any period of time in which
22 one's license has been revoked or suspended as provided by the
23 Optometry Act.

24 B. Each of the following acts committed by any
25 person constitutes a misdemeanor, punishable upon conviction

underscored material = new
[bracketed material] = delete

1 as provided in the Criminal Code:

2 (1) making a willfully false oath or
3 affirmation where the oath or affirmation is required by the
4 Optometry Act or the board's rules;

5 (2) selling or using any designation, diploma
6 or certificate tending to imply that one is a practitioner of
7 optometry, unless one holds a license as provided by the
8 Optometry Act;

9 [~~(3) refusal, after a request, to provide a~~
10 ~~patient a copy of his spectacle prescription, not including a~~
11 ~~contact lens prescription, providing the prescription is not~~
12 ~~over one year old;~~

13 ~~(4)]~~ (3) duplicating or replacing an
14 ophthalmic lens [~~not including contact lenses~~] for eyeglasses
15 without a current prescription not more than two years old or
16 without a written authorization from the patient if the
17 prescription is not available; or

18 [~~(5)]~~ (4) except for licensed optometrists
19 and as provided in Subsection A of Section 61-2-15 NMSA 1978,
20 using any trial lenses, trial frames, graduated test cards or
21 other appliances or instruments for the purpose of examining
22 the eyes or rendering assistance to anyone who desires to have
23 an examination of the eyes [~~provided, however, that it is not~~
24 ~~the intent of this paragraph to prevent any school nurse,~~
25 ~~schoolteacher or employee in public service from ascertaining~~

underscored material = new
[bracketed material] = delete

1 ~~the possible need of vision services, provided that such~~
2 ~~person, clinic or program does not attempt to diagnose or~~
3 ~~prescribe ophthalmic lenses for the eyes or recommend any~~
4 ~~particular practitioner or system of practice;~~

5 ~~(6) advertising by any means the fabricating,~~
6 ~~adapting, employing, providing, sale or duplication of~~
7 ~~eyeglasses or any part thereof. This paragraph does not~~
8 ~~preclude the use of a business name, trade name or trademark~~
9 ~~not relating to price or the use of the address, telephone~~
10 ~~number, office hours and designation of the provider in or at~~
11 ~~retail outlets, on business cards, eyeglass cleaners and cases~~
12 ~~or in news media or in public directories, mailings and~~
13 ~~announcements of location openings or the use of the words~~
14 ~~"doctors' prescriptions for eyeglasses filled" or "eyeglass~~
15 ~~repairs, replacements and adjustments"; or~~

16 ~~(7) selling of prescription eyeglasses or~~
17 ~~contact lenses, frames or mountings for lenses in an~~
18 ~~establishment in which the majority of its income is not~~
19 ~~derived from being engaged in that endeavor]. "~~

20 Section 12. Section 61-2-15 NMSA 1978 (being Laws 1973,
21 Chapter 353, Section 13) is amended to read:

22 "61-2-15. EXEMPTIONS. --

23 A. Nothing in the Optometry Act, except as
24 provided in Section [~~67-1-14 NMSA 1953~~] 61-2-16 NMSA 1978,
25 shall be construed to apply to licensed physicians or surgeons

underscored material = new
[bracketed material] = delete

1 or persons, clinics or programs under their responsible
2 supervision and control. Persons, clinics and programs under
3 the responsible supervision and control of a licensed
4 physician or surgeon shall not use either loose or fixed trial
5 lenses for the sole purpose of determining the prescription
6 for eyeglasses or scleral or corneal contact lenses. [The
7 ~~fitting of a contact lens to a patient shall be done at the~~
8 ~~practitioner's place of practice.~~

9 ~~B. Nothing in the Optometry Act, except as~~
10 ~~provided in Sections 67-1-2, 67-1-12, 67-1-14 and 67-1-15 NMSA~~
11 ~~1953, shall be construed to apply to persons selling~~
12 ~~eyeglasses who do not represent themselves as being qualified~~
13 ~~to detect or correct ocular anomalies and who do not traffic~~
14 ~~upon assumed skill in adapting ophthalmic lenses to the eyes.]~~

15 B. Nothing in the Optometry Act shall prevent
16 opticians from filling eyeglass prescriptions or selling
17 eyeglasses if they do not represent themselves as qualified to
18 detect or correct ocular anomalies or to practice optometry.

19 C. Nothing in the Optometry Act shall prohibit a
20 school nurse, school teacher or public service employee from
21 ascertaining the potential need for vision services if the
22 person does not attempt to diagnose or prescribe ophthalmic
23 lenses or recommend a particular practitioner or system of
24 practice. "